

PT 97-24
Tax Type: PROPERTY TAX
Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

MOODY BIBLE)	
INSTITUTE,)	Docket No: 94-16-355
APPLICANT)	
)	
v.)	Real Estate Exemption
)	for 1994 Tax Year
)	
DEPARTMENT OF REVENUE)	P.I.N.(S): 17-04-428-048
STATE OF ILLINOIS)	17-04-428-049
)	
)	
)	Alan I. Marcus,
)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Messrs. Howard G. Kaplan and Leonard J. Brenner appeared on behalf of the Moody Bible Institute.

SYNOPSIS: This proceeding raises the primary issue of whether the above captioned parcels qualify for exemption from 1994 real estate taxes under 35 ILCS 200/15-40.¹ In relevant part, that provision states as follows:

1. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), (hereinafter "Bracher"), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1994 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Property Tax Code (35 ILCS 200\1-1 et seq).

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, is exempt, including all such property owned by churches or religious institutions and denominations and used in conjunction therewith as housing facilities for ministers (including bishops, district superintendents, and similiar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations, and including the convents and monasteries where persons engaged in religious activities reside.

35 **ILCS** 200/15-40.

Applicant also seeks exemption of the above captioned parcels under 35 **ILCS** 200/15-35 and 35 **ILCS** 15-65. In relevant part, the former provides for exemption of "[a]ll property donated by the United States for school purposes and all property of schools, not sold or leased or otherwise used with a view to profit." The relevant provisions of the latter state that "[a]ll property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit: (a) institutions of public charity."

The controversy arises as follows:

On October 24, 1994, Moody Bible Institute, (hereinafter "MBI" or the "applicant") filed a real estate exemption complaint with the Cook County Board of Tax Appeals. Said complaint alleged the parcels in question were exempt from real estate taxation under 35 **ILCS** 205/19.1 and 35 **ILCS** 205/19.7.²

². The exemption provisions found in sections 19.1 and 19.7 of the Revenue Act of 1939 (35 **ILCS** 205/1 *et seq.*) are, for present

The Board reviewed applicant's complaint and recommended to the Department of Revenue (hereinafter the "Department") that the requested exemptions be denied. On November 9, 1995, the Department accepted this recommendation by issuing a certificate finding that the parcels were not in exempt use.

Applicant filed a timely request for hearing on November 15, 1995. After holding a pre-trial conference, the Administrative Law Judge conducted an evidentiary hearing on October 24, 1996. Following submission of all evidence and a careful review of the record, it is recommended that both parcels not be exempt from real estate taxation for the 1994 assessment year.

FINDINGS OF FACT:³

A. Description of the Subject Property and Other Preliminary Considerations

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Group Ex. No. 1 and Dept. Ex. No. 2.

2. The subject parcels are located at 171 W. Oak, Chicago, IL 60611 and identified by Permanent Index Numbers 17-04-428-048 and 17-04-428-049. They are improved with a 13-story

purposes, substantially similar to those contained sections 200/15-35, 200/15-40 and 200/15-65 of the Property Tax Code. Nevertheless, Bracher requires that this case be adjudicated under the Property Tax Code. Therefore, I shall cite to the appropriate provisions of that statute throughout the remainder of this Recommendation.

³. In order to facilitate better organization and promote greater clarity, I have divided the Findings of Fact into the following categories: Description of the Subject Property and Other Preliminary Considerations (Findings 1 through 10); Applicant's Organizational Structure (Findings 11 through 14); Applicant's Financial Structure (Findings 15 through 17) and The Subject Property's Operations and Fiscal Structure (Findings 18 through 24).

apartment building commonly known as "Morning Side Apartments" (hereinafter "MSA" or "the complex"). Dept. Group Ex. No. 1.

3. The complex occupies approximately 11,400 square feet. It provided housing for approximately 200 low-income tenants and had a waiting list of 40 people during 1994. *Id*; Tr. pp. 11 - 12, 18.

4. MSA is located less than a block north of applicant's main campus, which is currently tax exempt and not at issue in this proceeding. Dept Group Ex. No. 1; Applicant Ex. 7A; Tr. pp. 11 - 12.

5. The main campus is an educational facility on which approximately 1,500 students reside. It is accredited by the North Central Accrediting Association and offers various four-year undergraduate and master's degree programs that emphasize Christian religious studies in areas such as communications, sacred music, pastoral studies and missionary work. Tr. pp. 8, 40 - 41; 43 - 44.

6. While MBI does not formally ordain ministers, all of its programs require that each student participate in a practical Christian ministry (hereinafter "PCM") at least once a week. Tr. pp. 18, 41.

7. The PCM focuses on local community service. Some MBI students fulfill their PCM requirements by preaching, holding prayer meetings or giving musical performances at the complex. They also assist complex residents, many of whom are elderly or disabled, with shopping, cleaning or other daily necessities and invite residents to partake in various activities at the main campus,

such as concerts and aerobics. Applicant Ex. Nos. 2A and 2B; Tr. pp. 18 - 19, 34 - 40.

8. Students who do not fulfill their PCM requirements are disqualified from graduation. Tr. p. 36.

9. Applicant eventually plans to convert MSA to student housing. It was unable to take any steps toward that goal in 1994 due to lack of vacancies in the complex. Dept. Group Ex. No. 1.

10. Prior to February 17, 1994, applicant and two Illinois limited partnerships, Moody House Associates (hereinafter "MHA"), and Moody House Development Company (hereinafter "MHDC"), were beneficiaries of a land trust which vested American National Bank with legal title to the complex. However, MHA and MHDC assigned 100% of their respective beneficial interests in the land trust to applicant on February 17, 1994. Applicant Ex. No. 5; Tr. pp. 16 - 17.

B. Applicant's Organizational Structure

11. Applicant was originally incorporated as the Chicago Evangelical Society on February 12, 1887. Its original Articles of Incorporation have been subject to numerous amendments, the most recent being made pursuant to General Not For Profit Corporation Act on June 20, 1994. Said amendments provide, *inter alia*, that:

A. The corporation's name shall be the Moody Bible Institute of Chicago;

B. The corporation is organized for the purposes of conducting and maintaining an educational organization to include a Bible Institute for the education and training of Christian workers, teachers, ministers,

missionaries, etc., so they may competently and effectively proclaim the Gospel of Jesus Christ, and to promote and further the belief and acceptance of the principles of the Christian faith and the Gospel of Jesus Christ as set forth in the Bible by use of all available means of education and instruction, including but not limited to, the following: conducting a Bible Institute for the study of the Bible; conducting a Bible correspondence school for the study and training of students in the Bible and related subjects; operating, conducting, and maintaining facilities for the instruction and training of students in Christian missionary aviation; operating one or more radio stations on a non-commercial educational basis to broadcast programs of an instructional and inspirational nature pertaining to Biblical truths and subjects and promoting a belief in the Bible and the acceptance of its teachings; publishing and distributing books and literature of an instructional and inspirational nature pertaining to Biblical truths and subjects and promoting a belief in same; and, producing and distributing films, cassettes, presentations and programs (including radio, television, or other media) based on scientific research and knowledge of an instructional nature and pertaining to Biblical truths of the origin, function and destiny of man and the universe in which he lives.

C. The corporation is organized as a not-for-profit corporation and shall not be operated for purposes of making a profit;

D. No part of the corporation's net earnings shall inure to the benefit of any member, director, private individual, etc;

E. The corporation shall be prohibited from devoting its activities to carrying on propaganda or otherwise intervening in political campaigns;

F. In the event of dissolution, the corporation's assets shall first be used to pay off all legitimate corporate liabilities, and then be distributed to corporations, societies, etc. that engage in similiar activities.

Applicant Ex. Nos. 1A and 1B.

12. Applicant's by-laws contain a purpose statement that is similiar in substance to the one set forth in its Amended Articles of Incorporation. However, the by-laws further provide, *inter alia*, that:

A. It adheres to the following statements of faith, adopted from various verses of the Old and New Testaments: G-D is a person who has revealed Himself as a Trinity in unity, Father, Son and Holy Spirit - three persons and yet but one G-D; The Bible, including both the Old and New Testaments, is a divine revelation, the original autographs of which were verbally inspired by the Holy Spirit; Jesus Christ is the image of the invisible G-D, which is to say, He is Himself very G-D; He took upon Him our nature, being conceived by the Holy Ghost and born of the Virgin Mary; He died upon the cross as a substitutionary sacrifice of the sin of the world; He arose from the dead in the body in which he was crucified; He ascended into heaven in that body glorified, where He is now, our interceding High Priest; He will come again personally and visibly to set up his kingdom and to judge the quick and the dead; Man was created in the image of G-D but fell into sin, and in that sense, is lost; that this is true of all men, and except a man be born again he cannot see the kingdom of G-D; salvation is by grace through faith in Christ who His own self bare our sins in His body on the tree; the retribution of the wicked and unbelieving and the reward of the righteous are everlasting, and as the reward is conscious, so is the retribution; The Church is an elect company of believers baptized by the Holy Spirit in one body; its mission is to witness concerning its Head, Jesus Christ, preaching the gospel among all nations; and, that the church will be caught up to meet the Lord in the air ere He appears to set up His kingdom;

B. Only persons who are evangelical Christians shall be eligible for membership in applicant's corporation;

C. Responsibility for managing the corporation's daily business affairs is vested in a Board of Trustees, (hereinafter "the

Board"), which consists of not less than nine and not more than twenty-one persons, all whom must be men that adhere to the above statements of faith.

Applicant Ex. No. 6.

13. On June 21, 1943, the Internal Revenue Service found applicant to be organized and operated exclusively for religious purposes, and therefore exempt from federal income tax, under the then existing version of section 501(c)(3) of the Internal Revenue Code. This exemption was in effect throughout the 1994 assessment year. Applicant Ex. No. 4; Tr. p. 10.

14. Applicant is also exempt from paying Use and related taxes in the State of Illinois. Dept. Group Ex. No.1.

C. Applicant's Financial Structure

15. MBI follows a fiscal year which begins July 1 and ends June 30. Audited financial statements for the 1994 and 1995 fiscal years disclose the following about applicant's sources of income:

A. That it derived approximately 43% of its total income⁴ from unspecified contributions during the fiscal year ended June 30, 1994;

B. That it derived approximately 37% of its total income from the same source during the fiscal year ended June 30, 1995;

C. That its second leading source of revenue during both financial years was sales, with applicant deriving approximately 30% of its total revenues from that source during the fiscal year ended June 30, 1994 and approximately 32% of same from sales during the ensuing fiscal year;

⁴. All percentages are approximations derived by dividing the category of income or expense (e.g. unspecified contributions) by the appropriate total. Thus, for example, \$31,841,472.00/\$74,121,967.00 = .429 (rounded) or approximately 43%.

D. That its remaining sources of income were contributions, (approximately 14% in both fiscal years), investment income, (which ranged between 4 % and 5% in each of the two fiscal years), and other unspecified sources, which accounted for not more than 11% of applicant's total revenues in the 1994 and 1995 fiscal years.

Applicant Ex. No. 13.

16. The same financial statements disclose that applicant's expenses for the 1994 fiscal year amounted to \$70,030,244.00. They further disclose that applicant devoted 51% of these expenses to its public ministries, 28% to education and divided the remaining 21% between student services, management and general, student aid and fund-raising. *Id.*

17. The financial statements also disclose that applicant incurred \$72,813,073.00 in expenses during the fiscal year ended June 30, 1995 and that these expenses were apportioned as follows: 55% to public ministries; 25% to education; 7% to student services; 4% to management and general; 7% to fund raising and less than 1% to student aid. *Id.*

D. The Subject Property's Operations and Fiscal Structure

18. Each of MSA's 200 units features a living room, a dining room, a bedroom, a bathroom and a small kitchen. Tenants who reside in these units are low-income, elderly or disabled persons who satisfy the government requirements for subsidized housing. They occupy their units pursuant to leases provided by the Illinois Housing Development Authority (hereinafter "IDHA" or the "Authority") which, in substance, require that they make total monthly payments equal to their rent plus a parking space fee and other variable but unspecified charges. The leases further provided that all tenants

must pay security deposits and furnish certain unspecified utilities. Applicant Ex. No. 11; Tr. pp. 12, 14, 18, 27.

19. Actual rentals at the complex ranged from \$9.00 to \$1,314.00 per month. Average monthly rental was, however, 176.31.⁵ Applicant Ex. No. 10.

20. Average monthly subsidy per tenant was \$680.64 in 1994.⁶ Individual subsidies, however, ranged between \$192.00 and \$840.00 per month per tenant. *Id.*

21. Financial statements for MSA disclose that it earned total revenue of \$2,136,390.00 during the year ended December 31, 1994. 94% of these revenues were derived from net rental income, which in turn was broken down as follows: 21% from apartment rentals; 79% from housing assistance payments provided by the IDHA⁷ and less than 1% each from deductions for vacancy loss and rent free apartments. Applicant Ex. No. 15; Tr. p. 20.

⁵. I derived this average by dividing the total gross rentals indicated in Applicant Ex. No. 10 (\$33,675.85), by the number of occupied units, (191), shown on that exhibit.

⁶. I derived the average subsidy by dividing the total subsidies shown on Applicant Ex. No. 10, (\$135,447.00), by the total number of non-vacant subsidized units (199) shown on that exhibit.

⁷. The Authority provided these payments pursuant to an agreement with the applicant and its predecessors in title. Under terms of this agreement, IDHA provided part of the financing for construction of the complex in exchange for certain restrictions on MSA's fiscal operations, including limitations on the amount of rent charged. The agreement further provided that these payments must be used to fund repairs, replacements and other unspecified distributions approved by the IDHA. Applicant Ex. No. 15; Tr. pp. 21, 29.

22. MSA derived the remaining 7% of its total revenues from escrow accounts, other interest and one unexplained source, "sundry." Applicant Ex. No. 15

23. The complex incurred \$1,733,571.00 in total expenses before depreciation in the calendar year ended December 31, 1994. These expenses were apportioned as follows: 15% to administrative; 1% to operating; 14% to maintenance; 1.5% to materials and supplies; 9% to salaries and wages; 6.8% to utilities; 26.3% to taxes and insurance; 24.5% to financing and 1.3% to unspecified other. *Id.*

24. MSA also incurred \$172,604.00 in depreciation, and earned a profit of \$230,215.00,⁸ during the fiscal year ending December 31, 1994. *Id.*

CONCLUSIONS OF LAW:

On examination of the record established, this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 1994 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the above-captioned parcel does not qualify for such exemption under 35 **ILCS** 200/15-40 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

⁸.The profit was calculated by adding MSA's depreciation to its total expenses and subtracting that sum from the complex's total revenue. Thus, \$172,604.00 + \$1,733,571.00 = \$1,906,175.00. \$2,136,390.00 (total revenue) - \$1,906,175.00 = \$230,215.00.

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-3 et seq. The provisions of that statute that govern disposition of the instant proceeding are found in section 200/15-40. In relevant part, that provision states as follows:

All property used exclusively for religious purposes, or used *exclusively for school and religious purposes*, or for orphanages and *not leased or otherwise used with a view to profit*, is exempt [from real estate tax], including all such property owned by churches or religious institutions and denominations and used in conjunction therewith as housing facilities for ministers (including bishops, district superintendents, and similiar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations, and including the convents and monasteries where persons engaged in religious activities reside. (emphasis added).

35 **ILCS** 200/15-40.

Applicant also seeks exemption of the above captioned parcels under 35 **ILCS** 200/15-35 and 35 **ILCS** 15-65. In relevant part, the former provides as follows:

All property donated by the United States for school purposes and all property of schools, not sold or *leased or otherwise used with a view to profit*. (emphasis added).

35 **ILCS** 200/15-35.

The latter provides, in relevant part, that:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and *not leased or otherwise used with a view to profit*:

(a) institutions of public charity. (emphasis added).

35 ILCS 200/15-65.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968) (hereinafter "Nordlund"); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

An analysis of whether this applicant has met its burden of proof begins with some fundamental principles: first, that the word "exclusively," when used in section 200/15-40 and other tax exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." Gas Research Institute v. Department of Revenue, 145 Ill. App.3d 430 (1st Dist. 1987); Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill.

App.3d 186 (4th Dist. 1993). Second, that "statements of the agents of an institution and the wording of its governing documents evidencing an intention to [engage in exclusively exempt activity] do not relieve such an institution of the burden of proving that ... [it] actually and factually [engages in such activity]." Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987). Therefore, "it is necessary to analyze the activities of the [applicant] in order to determine whether it is an [exempt] organization as it purports to be in its charter." *Id.*

The first step in applying the above criteria is establishing a statutory framework for analyzing MBI's exemption claim. In order to establish this framework, I must ascertain whether this applicant's activities are primarily religious in nature. If they are, its claim to exemption must be measured against the standards established in section 200/15-40. If they are not, I must determine whether MBI qualifies as a "school" within the meaning of section 200/15-35 or an "institution of public charity" as described in section 200/15-65.

In People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132 (1911) (hereinafter "McCullough") the Illinois Supreme Court considered whether appellee's real estate qualified for exemption under amendments to the then-existing version of section 200/15-40. The court began its analysis by noting that "[w]hile religion, in its broadest sense, includes all forms and phases of belief in the existence of superior beings capable of exercising power over the human race, yet in the common understanding and in its application to

the people of this State it means the formal recognition of G-D as members of societies and associations." McCullough, *supra* at 136.

Cases decided after McCullough have acknowledged that religious beliefs are not necessarily limited to those which profess an orthodox belief in G-D. See, United States v. Seeger, 380 U.S. 163 (1965). However, the following definition of "religious purpose" contained in McCullough, emphasizes a more traditional approach:

As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction. McCullough at 136-137.

Based on the purpose statement contained in its by-laws, and the Christian-oriented nature of its curriculum, I conclude that MBI's activities are primarily religious in nature. Accordingly, its claim for exemption must be analyzed under the provisions of section 200/15-40 which apply to properties "used exclusively for school and religious purposes."

In making this analysis, it must be emphasized that prior to 1909, it was a requirement for the exemption of property used for religious purposes that it be owned by the organization that claimed the exemption. Since that time however, a statutory amendment eliminated that requirement. The test of exemption became use and not ownership. People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922). See also, American National Bank and Trust Company v. Department of Revenue, 242 Ill.App.3d 716 (2nd Dist. 1993). However, both the plain language of section 200/15-40 and Illinois case law prohibit exemption where property used exclusively for religious purposes is "leased or otherwise used with a view to profit ...[.]"

Victory Christian Church v. Department of Revenue, 264 Ill. App.3d 919 (1st Dist. 1988) (hereinafter "Victory Christian").

The instant record establishes that MSA was constructed pursuant to a business agreement, negotiated and executed at arm's length, between applicant, its predecessors in title and the IHDA. Such a secular transaction is inconsistent with the definition of "religious purpose" established in McCullough. More importantly, the record establishes that MSA consists *entirely* of rental apartments. Consequently, its primary use is one which the plain meaning of section 200/15-40 and Victory Christian expressly declare to be non-exempt.

Applicant can not defeat the above conclusion by arguing that its PCM requirements render MSA "reasonably necessary" to achieve MBI's exempt function of religious education. See, Memorial Child Care v. Department of Revenue, 238 Ill. App.3d 985 (4th Dist. 1992), (hereinafter "MCM") (appellant's child care center held tax exempt based on finding that subject property was "reasonably necessary" to further the exempt purposes of appellant's exempt affiliate, Memorial Medical Center). MCM at 991 - 993.

This argument draws support from the facts that MBI students cannot graduate without completing PCMs and, in some cases, carry out their PCMs at the complex. However, the record fails to disclose that applicant requires its students to do PCM work at MSA. Rather, it seems to imply that MSA provides but one of many locations, which applicant's students may choose on an individual basis, for performing such work. Under these circumstances, I conclude that any uses of the complex attributable to applicant's PCM requirements are

incidental vis-a-vis those associated with the non-exempt leasing. Therefore, MSA cannot be exempted under the "reasonably necessary" standard established in MCM.

Applicant's intent to convert the complex into student housing also falls short of establishing exempt use. Illinois courts have long held that "evidence that land was acquired for an exempt purpose does not eliminate the need for proof of actual use for that purpose" and therefore, "[i]ntention to use is not the equivalent of actual use." Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994). Based on these holdings, and because MSA's 40-person waiting list made it factually impossible for MBI students to reside in the complex during 1994, I conclude that applicant's evidence pertaining to potential student housing is speculative, and therefore, legally insufficient to sustain its burden of proof.

Nor does the complex qualify for exemption under sections 200/15-35 and 200/15-65. The italicized language in both sections is identical to that found in section 200/15-40. As such, the plain meaning of this language clearly establishes a legislative mandate which denies exemption to leased properties. Furthermore, Illinois courts have long recognized that this mandate applies to both "schools" and "institutions of public charity." See, People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924) (hereinafter "Baldwin"); Turnverein "Lincoln" v. Board of Appeals of Cook County, 358 Ill. 135 (1934); Salvation Army v. Department of

Revenue, 170 Ill. App.3d 336, 344 (2nd Dist. 1988). Based on these holdings, and my finding that the subject parcel was primarily used for purposes that the General Assembly has expressly declared to be non-exempt, I conclude that the subject parcel is not exempt from real estate taxes under sections 200/15-40, 200/15-35 and 200/15-65.

Despite the above, I am bound to recognize that section 200/15-65 concludes with the following language:

Property otherwise qualifying for exemption under this section shall not lose its exemption because legal title is held by an entity (i) that is organized solely to hold that title and qualifies under paragraph (2) of section 501(c) of the Internal Revenue Code or its successor, whether or not that entity receives rent from the charitable organization for the repair and maintenance of the property or (ii) by an entity that is organized as a partnership, in which the charitable organization or an affiliate or subsidiary of the charitable organization, is a general partner, for purposes of owning and operation a residential rental property that has received an allocation of Low Income Housing Tax Credits for 100% of the dwelling units under section 42 of the Internal Revenue Code of 1986. [26 U.S.C.A, section 501.]

One could argue that MSA qualifies for exemption under the above language because it is occupied by elderly or disabled tenants with low incomes. However, the first sentence clearly requires that the complex must "otherwise" qualify for exemption under section 200/15-65.

The preceding analysis has demonstrated that MSA was not used for exempt purposes during 1994. Consequently, it does not satisfy the statutory pre-requisite of "otherwise qualifying for exemption under [section 200/15-65]." Moreover, the applicant did not submit

any evidence establishing that it is the type of organization described in subparagraphs (i) or (ii). Consequently, MSA is not entitled to exemption under the above-quoted portion of section 200/15-65.

Nor does the complex qualify for a partial year's exemption under the above language because MHC and MDHC held partial ownership interests in the complex until February 17, 1994. See, 35 **ILCS** 200/9-185.⁹ While these entities may be the types of organizations described in sub paragraphs (i) and (ii), neither MHC nor MDHC is the applicant herein. Accordingly, both entities lack standing to raise the instant exemption claims. See, Highland Park Women's Club v. Department of Revenue, 206 Ill. App.3d 447 (2nd Dist. 1991).

One could argue that MSA qualifies as "charitable" because nearly all of its residents receive rental subsidies. However, the record clearly establishes that these subsidies are provided entirely

⁹. The relevant portion of section 200/9-185 states as follows:

The purchaser of property on January 1 shall be considered the owner [who is therefore liable for any taxes due] on that day. However, when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed. Whenever a fee simple title or lesser interest in property is purchased, granted taken or otherwise transferred from a use exempt from taxation under this Code to a use not so exempt, that property shall be subject to taxation from the date of the purchase or conveyance.

by the IDHA. Hence, applicant is not spending any of its own funds on such assistance. As consequence thereof, I cannot conclude that applicant is relieving any of the State's financial burdens merely by assuming ownership of MSA. See, DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App.3d 461 (2nd Dist. 1995).

The holding in Inter-Varsity Christian Fellowship of the United States v. Hoffman, 62 Ill. App.3d 798 (2nd Dist., 1978), (hereinafter "IVCF") does not alter any of the above conclusions. There, the court held that a building used to house appellant's literature division, wherein it prepared religious publications, was equally capable of being exempted under the then-applicable versions of Sections 200/15-40 and 200/15-65.

The court undertook this dual analysis because the use at issue inherently involved religious and secular functions which were not susceptible of being separated from one another. Thus, it does not appear that the IVCF court could have classified these functions as primarily religious or charitable without misconstruing the true nature of appellant's enterprise. Here, however, the secular and religious uses are capable of being separated. Furthermore, the latter is clearly incidental to the former. For these reasons, and because Illinois law specifically recognizes the secular use involved herein as being non-exempt, I conclude that the dual analysis undertaken in IVCF is inappropriate in the present case.

Applicant's final contentions are based on its exemptions from federal and Illinois Use taxes as well Revenue Ruling IR-96-25, issued by the Service on May 1, 1996. With respect to the former, I

note that in People ex rel County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970), the Illinois Supreme Court established the now well-settled principle that such exemptions, in and of themselves, do not establish the requisite exempt use. Moreover, although the federal income tax exemption establishes that applicant falls within the appropriate exemption provisions of the Internal Revenue Code, these provisions do not preempt section 200/15-40 or other statutory provisions governing exemption from Illinois real estate taxation. Therefore, neither the sales tax nor federal income tax exemption are dispositive of the present inquiry, which is whether MSA was in exempt use during 1994.

Revenue Ruling IR-96-25 provides, in substance, for a procedure that sets forth a safe harbor under which organizations which provide low-income housing will be considered charitable [and therefore exempt from federal income tax] because they relieve the poor and distressed as described in Reg. section 1.501(3)-1(d)(2) [sic]. Nevertheless, the above reasoning demonstrates that this Ruling has no precedential value in the present context. Therefore, I recommend that the Department's decision denying MSA an exemption from 1994 real estate taxes be affirmed.

WHEREFORE, for all the above-stated reasons, MSA should not be exempt from 1994 real estate tax.

Date

Alan I. Marcus,
Administrative Law Judge